IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No. 292 of 2005

Date of decision: 26.10.2006

Rameshwar @ Ramniwas

..... Petitioner.

Versus

Gaje Singh & Others

..... Respondents.

CORAM: HON'BLE MR. JUSTICE P.S. PATWALIA

Present:- Mr. Rajiv Kaswan, Advocate
for the petitioner.

Mr. V.P. Malik,Advocate
for the respondents.

P.S. PATWALIA, J. (ORAL)

By way of present revision petitioner-defendant in the suit is challenging the orders of the trial Court and the lower Appellate Court whereby an application for interim injunction filed by the plaintiff was allowed.

Both the courts have found relying on the report of the local commissioner that prima facie the plaintiff was successful in showing that there was a rasta which was being used by the plaintiff for the last number of years. It has been found by the trial Court that if this access is not allowed to the plaintiff, it would not be possible to the plaintiff to approach his fields. The relevant observations of the trial Court in this regard are as hereunder:

> ".....The whole claim of the plaintiff is based on easementary rights, which have been challenged by the defendants. The assertion of plaintiff is somehow, supported by the Local Commissioner's Report. Though, in the operative part, Local Commissioner, stated that in Square No.129 Killa No.21/22/23/24 at that spot. A "Rasta" was maintained in Square No.129 Killa No.21/22 on their southern side. The width of "Rasta" in each killa was 8.5 ft. I have shown this "Rasta" with red ink in site plan Annexure C-3 and there was cotton crop in the rest of these killas. In square No.129 killa No.23/24 there was no "Rasta" existing at the spot. In these killas cotton crop was sown except area 9 ft. x 40 karam in Square No.129 Killa No.23 9 ft. x 37 karam in Square No.129 Killa No.24 in the Southern side. This land was ploughed. The ploughed land was shown in blue ink as Annexure C-3.
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> 26.This is the site area 9 ft. x 40 karam and 9 ft x 37 karam which has been claimed by the plaintiff, as alleged rasta. Learned counsel for the defendant on asking could not able to tell that if this portion/site is not being used as rasta, since so many years, how the plaintiff is going to his fields. It is also nowhere the case/ reply of defendant, that plaintiff has mala fide intention to encroach upon his land by way of filing the present suit."

Still further it has been found that if this small area of 8-1/2 feet is being used as a "Rasta", no prejudice will be caused to the plaintiff. The relevant observations of the trial Court to this effect are as hereunder:-

> "Admittedly, alleged site/rasta/area of defendants land is simply ploughed just now and there is no cotton crop over it. So if the same will be used as rasta, as stated by the plaintiff the defendant is not going to be suffered, at this stage."

These averments have been affirmed by the lower Appellate Court. Rather the lower Appellate Court has also noted the contention of the plaintiff that he had given a portion of his land to the defendants in lieu of this common rasta. The observations of the lower Appellate Court to this effect are as hereunder:-

> "The learned counsel for the respondent has supported the order under challenge contending that the respondent had given his own land to the appellant in lieu of the land beneath the passage in question and this fact was entered in the revenue records. To take his point across, the learned counsel for the respondent has referred to copy of mutation No.1034 sanctioned on 12.08.1980 whereby 0-16 marla area of Khasra No.19 was transferred in favour of Des Raj etc. by Hawa Singh etc."

After going through the report of the Local Commissioner and the pleadings of the parties it has been found on facts that prima facie the plaintiff should be held entitled to access to his fields. I find no error in the view taken by the Courts below.

The present revision petition is therefore dismissed.

At this stage however I may notice that learned counsel for the petitioner contends that even the trial Court had observed that the plaintiff should approach the Consolidation Authorities for seeking a permanent

access to his fields. He submits that even though an order was passed in July 2004, so far the plaintiff had not approached the Consolidation Authorities.

Learned counsel for the plaintiff submits that his client would make a necessary application within a period of one month from today.

October 26, 2006 **(P.S. PATWALIA)**
dinesh **JUDGE**